

By Senator Dean

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1 A bill to be entitled
 2 An act relating to administrative procedures; amending
 3 s. 120.595, F.S.; requiring that a final order in
 4 specified administrative proceedings award all
 5 reasonable costs and attorney fees to a prevailing
 6 party under certain circumstances; revising the
 7 criteria used by an administrative law judge to
 8 determine if a party participated in a proceeding for
 9 an improper purpose; making technical changes;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (1) of section 120.595, Florida
 15 Statutes, is amended to read:

16 120.595 Attorney's fees.—

17 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 18 120.57(1).—

19 (a) The provisions of this subsection are supplemental to,
 20 and do not abrogate, other provisions allowing the award of fees
 21 or costs in administrative proceedings.

22 (b) The final order in a proceeding conducted pursuant to
 23 s. 120.57(1) shall award all reasonable costs and all a
 24 reasonable attorney fees ~~attorney's fee~~ to the prevailing party
 25 only ~~if where~~ the administrative law judge determines that the
 26 ~~nonprevailing adverse party has been determined by the~~
 27 ~~administrative law judge to have~~ participated in the proceeding
 28 for an improper purpose.

29 (c) In proceedings conducted pursuant to s. 120.57(1), ~~and~~

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30 ~~upon motion,~~ the administrative law judge shall determine
31 whether a ~~any~~ party participated in the proceeding for an
32 improper purpose as defined in ~~by~~ this subsection. In making
33 such determination, the administrative law judge shall consider
34 whether the nonprevailing adverse party ~~has~~ participated in
35 another ~~two or more other~~ such proceeding ~~proceedings~~ involving
36 the same prevailing party and ~~the same~~ project as an adverse
37 party ~~and~~ in which ~~such two or more proceedings~~ the
38 nonprevailing adverse party did not establish ~~either~~ the factual
39 or legal merits of its position. The judge shall also, ~~and shall~~
40 consider whether the factual or legal position asserted in the
41 instant proceeding would have been cognizable in the previous
42 proceeding ~~proceedings~~. In such event, it shall be rebuttably
43 presumed that the nonprevailing adverse party participated in
44 the pending proceeding for an improper purpose.

45 (d) In a ~~any~~ proceeding in which the administrative law
46 judge determines that a party participated in the proceeding for
47 an improper purpose, the recommended order shall ~~so~~ designate
48 that party and ~~shall~~ determine the award of costs and attorney
49 attorney's fees.

50 (e) For purposes ~~the purpose~~ of this subsection, the term:

51 1. "Improper purpose" means participation in a proceeding
52 pursuant to s. 120.57(1) primarily to harass or to cause
53 unnecessary delay or for frivolous purpose or to needlessly
54 increase the cost of litigation, licensing, or securing the
55 approval of an activity.

56 2. "Costs" has the same meaning as the costs allowed in
57 civil actions in this state as provided in chapter 57.

58 3. "Nonprevailing adverse party" means a party that has

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59 failed to have substantially changed the outcome of the proposed
60 or final agency action which is the subject of a proceeding. If
61 ~~In the event that~~ a proceeding results in any substantial
62 modification or condition intended to resolve the matters raised
63 in a party's petition, it shall be determined that the party
64 having raised the issue addressed is not a nonprevailing adverse
65 party. The recommended order shall state whether the change is
66 substantial for purposes of this subsection. ~~In no event shall~~
67 The term "nonprevailing party" or "prevailing party" may not be
68 deemed to include a ~~any~~ party that has intervened in a
69 previously existing proceeding to support the position of an
70 agency.

71 Section 2. This act shall take effect July 1, 2014.